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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,675	01/25/2002	Kenneth Charles Giese	2001/02	1022

22474 7590 05/11/2004

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EXAMINER

TADESSE, YEWEBDAR T

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/056,675

Applicant(s)

GIESE, KENNETH CHARLES

Examiner

Yewebdar T Tadesse

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 12-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10 and 11 is/are rejected.
- 7) ☒ Claim(s) 3 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03262004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-11, drawn to an adjustable shroud and a spinneret, classified in class 425, subclass 72.2.
  - II. Claims 12-17, drawn to a melt spinning process, classified in class 264, subclass 211.14.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used to minimize the release of vaporized spin agent.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Gregory Clements on 02/10/2004 a provisional election was made with traverse to prosecute the invention of I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 12-17 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Estep et al (US 6,101,698). As to claim 1, Estep et al (US 6,101,698) discloses (see Figs 3-5, column 6, lines 22-38 and column 8, lines 14-17) an adjustable shroud (laterally adjustable skirt 26 with seal channel 32, see for the arrows in Fig 4) for use in a melt spinning process having means to secure it in close proximity to a spinneret (spinpack 20 with a spin head spinning polymer into fiber), the shroud (skirt 26) having means to secure it in close proximity to a spinneret (spinpack 20), and means to adjust the length of the shroud (manually adjusting the seal between the skirt 26 and the channel 32 ). As to claim 2, in Estep et al the shroud (skirt 26) is quadrilateral (see Figs 3-4). With respect to claim 4, in Estep et al the shroud (skirt 26 and seal channel 32) is in the form of nesting walls.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estep et al (US 6,101,698) or Stofan (US 3,858,386) as applied to claim 1 above, and further in view Estep et al (US 6,101,698). Estep et al discloses a manually adjustable shroud (skirt) but lacks teaching a pneumatic, hydraulic or mechanical means to adjust the shroud. However, Estep et al teaches a lifting crane to adjust the length of the spinpack. It would have been obvious at the time the invention was made to replace the non-mechanical (manual) shroud length adjusting means with a mechanical means pneumatic or hydraulic in Estep et al to eliminate manual labor or facilitate the production.

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10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Estep et al (US 6,101,698) as applied to claim 1 above, and further in view of Stofan (US 3,858,386). Estep et al lacks teaching a shroud containing heating means. Stofan discloses (see columns 2-3, lines 64-68 and 1-12 respectively) a shroud containing heating means (electrical resistors). It would have been obvious at the time the invention was made to include heating means in the shroud of Estep et al to maintain the spun agent at the desired temperature as it passes the shroud or skirt.

11. Claims 7-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stofan (US 3,858,386) in view of Estep et al (US 6,101,698). As to claims 7 and 10, Stofan discloses (see Fig 1, column 2, lines 33-37 and columns 2-3, lines 64-68 and 1-24 respectively) apparatus for producing polyester yarn comprising a spinneret (pack 10 including spinneret), a shroud (12) and shroud containing heating means (electrical resistors). Stofan lacks teaching adjustable shroud. Estep et al teaches adjustable shroud (skirt 26 with seal channel 32 in the form of nesting walls). It would have been obvious at the time the invention was made to include adjustable shroud in Stofan to extend the shroud (skirt with channel) downward and enclose or seal the spin cell area in order to minimize release of the spin agent (see column 1, lines 41-44). As to claim 8, in Stofan the shroud (12) is quadrilateral (see Fig 1).

***Allowable Subject Matter***

12. Claims 3 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: Prior art of record does not disclose or suggest an adjustable shroud or a combination an adjustable shroud and a spinneret comprising, among others, a quadrilateral adjustable shroud, and wherein the two walls form quadrilateral shroud with two folding walls.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yewebdar T Tadesse whose telephone number is (571) 272-1238. The examiner can normally be reached on Monday-Friday 8:00 AM-4: 30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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